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Paper No. 6

In re Application of
Michael D. Zoeckler
Application No. 09/559,704
Filed: April 27, 2000
Attorney Docket No. 7137

: DECISION ON PETITION

:

This is a decision on the petition filed by facsimile transmission on December 6, 2001 by which petitioner requests withdrawal of the holding that this application stands abandoned for failure to file a reply to the Office letter dated May 22, 2001.

The petition is granted.

Petitioner alleges that a reply to the Office letter in question was in fact filed on May 30, 2001. This allegation is supported by a copy of the reply and by a copy of a postcard receipt which shows that the reply was in fact received on May 31, 2001. It is noted that the reply has a "Certificate of Express Mailing" affixed thereto which is dated May 30, 2001, but the "date-in" on the copy of the Express Mailing Label which has also been attached to the petition shows that the reply was not deposited with the United States Postal Service as "Express Mail" until May 31, 2001. Counsel should note that in accordance with 37 CFR 1.10, a certificate of express mailing is no longer utilized; the controlling date is the date-in which reflects deposit with the USPS. However, the petition and the copy of the reply, the copy of the postcard receipt, and the copy of the Express Mail Label together establish that a timely reply to the Office letter in question was in fact filed on May 31, 2001. Therefore, this application was not in fact abandoned.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the examiner for action on the reply filed on May 31, 2001.

PETITION GRANTED.

E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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